UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:18-cr-33-KDB-DCK-1

UNITED STATES OF AMERICA,)	
Plaintiff,)	
VS.)	ORDER
DEVON TERMAINE ROSE,)	ORDER
Defendant.)	
)	

THIS MATTER comes before the Court on Defendant's *pro se* "Motion Pursuant to 28 U.S.C. § 2244 Otherwise Motion Requesting Leave to File a Second or Successive Motion Pursuant to 28 U.S.C. § 2255," (Doc. No. 32), and the Court's May 5, 2020 Order, (Doc. No. 33).

Defendant filed this § 2244 Motion seeking leave to file a second or successive § 2255 motion to vacate, however, he has not previously filed a § 2255 motion to vacate. (Doc. No. 32). The Court issued an Order pursuant to pursuant to <u>United States v. Castro</u>, 540 U.S. 375, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003) on May 5, 2020, informing Defendant of the consequences of recharacterizing his Motion as a § 2255 motion to vacate. (Doc. No. 33). The Court gave Defendant 20 days to inform the Court whether he was consenting to the recharacterization of his § 2244 Motion as a Motion to Vacate, or to file a superseding § 2255 Motion to Vacate. (<u>Id.</u>).

Defendant has now filed a superseding § 2255 Motion to Vacate that will be docketed in a separate civil case. The instant § 2244 Motion will therefore be denied as moot.

IT IS, THEREFORE, ORDERED that Defendant's "Motion Pursuant to 28 U.S.C. § 2244 Otherwise Motion Requesting Leave to File a Second or Successive Motion Pursuant to 28 U.S.C. § 2255," (Doc. No. 32), is **DENIED** as moot.

Signed: May 18, 2020

Kenneth D. Bell

United States District Judge